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TAX COMMISSIONER

Property Tax Newsletter

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Classification of Agricultural Land

For property tax purposes, assessment officials must determine the proper classification of real property. North Dakota Century Code (N.D.C.C.) § 57-02-01(1) defines agricultural property as land used for raising agricultural crops or grazing farm animals.

Some land is easy to classify as agricultural, such as cropland, acreage tilled to grow crops, or acreage with alfalfa or grasses, cut for feeding purposes. Examples of non-cropland include native grassland and land suitable for and used for grazing cattle. The usage relates to operation of a farm.

Some land is used only for growing crops or grazing farm animals. Some land is used for growing crops or grazing farm animals and occasionally used for something else, such as hunting. The statute does not provide that the land must be used predominately for growing crops or grazing farm animals so, if the land is used at all for agricultural purposes, it may be classified as agricultural land. If, however, land is not used as part of a farm operation but used instead for another purpose, such as hunting or a gravel pit, the parcel should be classified as commercial property because it does not qualify as agricultural property or as residential property. It should be valued according to market value.

Land platted after March 30, 1981, that meets additional criteria cannot be classified as agricultural land. See N.D.C.C. § 57-02-01(1) for reference. ●

Attorney General's Opinions Available on The Web

Attorney General's Opinions issued since January 1, 1993, are now available on the Attorney General's website, <http://www.ag.state.nd.us>. New opinions are added as they are issued. Go to the website and click on Legal Opinions on the left side of the screen. ●

Minimum Acreage Required For Inundated Land

Agricultural land is eligible for classification as inundated agricultural land when it contains at least 10 contiguous acres inundated to the extent it is unsuitable for growing crops or grazing farm animals for two or more consecutive growing seasons, the value exceeds 10 percent of the average agricultural value of noncropland for the county, and income produced from any source in the most recent prior year is less than the county average revenue per acre for noncropland as calculated by NDSU.

As stated above, for classification as inundated agricultural land, one of the requirements is that the area must contain a minimum of 10 contiguous acres. If a quarter section of land has several areas, each covering less than 10 acres, but the total acreage of inundated land in the parcel equals or exceeds 10 acres, those areas are not eligible for classification as inundated agricultural land. To qualify, the area under water must contain a contiguous area of 10 or more acres. ●

Interim Taxation Committee Met in June

The Interim Taxation Committee met June 18, 2002, in Bismarck. The property tax agenda included valuation of subsidized housing, railroad property valuations and taxes, and agricultural property assessment.

The committee discussed a bill draft that would provide for a partial property tax exemption for subsidized housing that qualifies under Section 42 of the IRS Code. Qualifying properties are valued according to market value and then an amount, representing the exemption, is subtracted from the market value. One component is the value to the renter of having restrictions on rent. The second component of the exemption is the amount of value received for the income tax credit under Section 42 of the IRS Code.

The committee also discussed railroad valuations and property taxes. Personal property of railroads, as well as other personal commercial property, is not taxed in North Dakota. The same mill rate applied to all other property also applies to railroad property. Abandoned railroad property is no longer considered railroad operating property and should be locally assessed.

The committee reviewed a bill draft to limit agricultural land valuation for tax years 2003-2004. The draft provides that countywide valuations in 2003-2004 would be replaced by 2002 valuations if the cropland, noncropland, and inundated agricultural land valuation for a county are each higher than the 2002 amounts. The committee also reviewed a bill draft providing a floor on the capitalization rate of nine

percent. There was a request for preparation of a bill draft to provide that the capitalization rate in the agricultural property valuation formula is to be based on consideration of Agribank loan of a term of 15 year or more. ●

Assessment Education

The Property Tax Division will finalize its schedule for upcoming assessment/appraisal education shortly after the annual conference of the North Dakota Association of Assessing Officers. One option is to bring an instructor to North Dakota to present an appraisal course of the International Association of Assessing Officers. Under consideration are mass appraisal and land valuation courses. Comments and suggestions are appreciated. ●

Rehabilitation Clarified

The purpose of establishing renaissance zones is to provide significant improvements to property. North Dakota Century Code § 40-63-05 provides for a partial or complete property tax exemption of buildings, structures, fixtures and improvements purchased or rehabilitated as a zone project for business/investment purposes or as a single-family residence.

Rehabilitation is defined as repair or remodeling that is equal to or exceeds 50 percent of the current true and full value for commercial buildings and 20 percent for single-family homes. To calculate the value of the rehabilitation, multiply the percentage (50 percent or 20 percent) by the *total* true and full value of the property, not just the building value.

The amount of exemption applies only to the building value because land is not eligible for exemption. Richard Gray of the Department of Commerce, Division of Community Services, works with renaissance zone authorities. Questions may be directed to him. The phone number for that office is (701)328-5300. ●

Publications Available on The Web

In an effort to reduce printing and postage costs, the Tax Department is looking at creating lists of persons who receive various publications and who would like to receive them electronically. We will notify those persons via e-mail when the publications become available on our website. Printed copies will still be available to persons who do not have web access or who prefer to receive printed copies.

If you would like to be notified each time the Property Tax Newsletter becomes available on the Tax Department website, please send your e-mail address to lwedge@state.nd.us and ask to be placed on the notification list for the Property Tax Newsletter. ●

Attorney General Issues Opinion

In a May 24, 2002, letter opinion, the ND Attorney General interprets N.D.C.C. §§ 57-02-01(1) and 57-02-08(15) regarding farm structures and improvements located on agricultural lands. In the situation he responded to, structures used for farming purposes were located on former railroad lease sites within an incorporated city. Some of the sites were platted prior to March 30, 1981, and some were not. Concern was

expressed about tax inequities. The Attorney General was asked whether the city governing board has any discretion when applying the provisions of N.D.C.C. §§ 57-02-01(1) and 57-02-08(15).

The Attorney General opined that the legislature determined the classes of property and there is no statutory authority for governing boards to have discretion in classifying property. Property classifications are defined in N.D.C.C. § 57-02-01. If the parcels were platted prior to March 30, 1981, and are properly classified as commercial property, structures and improvements located on those parcels do not qualify for exemption as farm structures because they are not located on agricultural land. Structures located on unplatted land within an incorporated city may qualify for the farm building exemption according to N.D.C.C. § 57-02-08(15) provided the land is properly used and classified as agricultural land and the structures are used as part of a farm operation.

If there is any question regarding the taxable or exempt status of real property, assessment officials should assess the property and the owner would need to show evidence to support the claim for exemption.

This opinion overrules the portion of the July 25, 1990, letter opinion to Douglas Manbeck, Nelson County State's Attorney, pertaining to the definition of agricultural land and exemption of buildings as farm residences. The 1990 opinion provided that structures qualify for exemption as farm structures according to N.D.C.C. 57-02-08(15) if used to store grain as part of a farm operation. Its implication was that land used as part of a farm operation is considered agricultural land even if no agricultural crops were grown or cattle grazed on the

parcel of land. Attorney General Stenhjem disagreed and stated that, in order for property to be classified as agricultural land, agricultural crops must be grown or farm animals must be grazed on the parcel of land. ●

Omitted Property Assessments

The county auditor is responsible for correcting the assessment and tax lists for the appropriate year(s) according to the provisions of N.D.C.C. §§ 57-14-01 through 57-14-07. The corrections are necessary whenever it's discovered that real property assessments were omitted, clerical errors were made in valuing properties, or buildings/structures were listed and assessed against the wrong parcel.

The county board of equalization, which meets in June, does *not* have authority to add an assessment for any property that was not assessed by the assessor or the local board of equalization. The county auditor must add the assessment as omitted property according to N.D.C.C. §§ 57-14-01 through 57-14-07 and send the owner notification of the assessment and the hearing date to consider the assessment. The board of county commissioners must review and equalize the assessment and may do so as its business on the day of the county board of equalization meeting; however, the board's action regarding the omitted assessment should not be included with the minutes of the county board of equalization, rather as minutes of the board of county commissioners. In addition, N.D.C.C. § 57-14-06 requires the county auditor to keep a separate assessment list of omitted property for the year or years the assessment was omitted. ●

Problem Corner

A mobile home owner paid the first half of the 2002 mobile home tax and wants to obtain a moving permit to move the mobile home to another county where he will trade it to a dealer who is not subject to the provisions of N.D.C.C. ch. 57-55. Can the tax director issue a moving permit?

The mobile home was situated in the county on January 10th; therefore, the entire amount of mobile home tax for the year is due. In their trade agreement, the mobile home owner and the dealer may negotiate the amount of applicable tax for the remaining months of the year. That does not relieve the mobile home owner of the responsibility for payment of the tax for the balance of the year.

There is no provision to prorate the mobile home tax when a dealer acquires a mobile home during the year. Therefore, the tax director cannot issue a mobile home moving permit until the entire amount of tax due for the year is paid. ●

Need Assistance?

Please direct property tax questions or concerns to:

Office of State Tax Commissioner
Property Tax Division
Phone: (701)328-3127
Toll free within ND: 1-800-638-2901,
option 5
Relay North Dakota 1-800-366-6888
(for the speech and hearing impaired)
Fax: (701)328-3700
E-mail: mdickerson@state.nd.us
Website: www.ndtaxdepartment.com